

Business Plan and Budget 2010/11

UKCTA Response to PhonepayPlus
Consultation

Submitted to Ofcom: 15th January 2010

UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.com.

Introduction

UKCTA members welcome the opportunity to comment on PhonepayPlus' clear and concise Business Plan and Budget 2010/11. Our members continue to be supportive of Phonepay Plus' work and welcome the clear trends in improved compliance within the industry. We are generally supportive of the proposed Business Plan and Budget and have responded in more detail in response to the questions where we feel the proposals stray from the core regulatory duties of PhonepayPlus.

We welcome the willingness of PhonepayPlus to tackle the source of breaches further down the value chain than has been the case previously. We believe that a pre-emptive approach at this level as opposed to a reactive fine based approach will reap the greatest benefits in terms of greater consumer confidence and improved industry compliance. Such an approach will be strengthened by the introduction of a registration database and this will allow regulation to be targeted at the most appropriate areas. We would caution however that PhonepayPlus remit should be to regulate the value chain and not to become diverted into general consumer protection issues for which there are other regulatory bodies already in existence.

UKCTA members appreciate that it is desirable for PhonepayPlus to synchronise its consultations with the work of Ofcom and that this may require shorter than usual timescales for consultation. However we would ask that in future PhonepayPlus also gives adequate consideration to the resources available to those stakeholders from whom it is seeking an opinion. Christmas is a time of reduced resource and UKCTA

members expect this to be taken into consideration with longer, not shorter, timescales made available to respondents. This is particularly true of a topic which is a fundamental underpinning of PhonepayPlus' remit.

Q & A

In the following section, UKCTA responds to the specific questions (1 – 12) posed in the consultation document.

Question 1: PhonepayPlus will be developing a new Three-Year Strategic Plan in 2010. Do you think our purpose and role as set out above still describes the priorities for regulation in the phone-paid services sector? If not, how do you think this should develop?

UKCTA does not believe that the purpose and role of PhonepayPlus needs to be fundamentally changed. The vision is concise and clearly set out and for the most part accurately captures the work of the regulator. There are however two sections in particular which appear to need slightly tighter wording.

The first is the mission statement which sets out PhonepayPlus' remit as being to provide: "consumer protection where services are charged to some form of telecommunications account". This is an interpretation which extends far beyond the definition of the Communications Act 2003 and we note that such an extension was not contemplated under Ofcom's recent PRS Scope Review. We suggest that this aspect of the Mission Statement is revisited with closer reference to the Communications Act.

UKCTA agrees that PhonepayPlus has an important role to protect consumers from loss or harm, but we query whether PhonepayPlus should have such a prominent statement about the provision of information within its Mission Statement. Ofcom already has consumer protection powers and through General Condition 14 in particular this is translated into requiring Networks Operators to provide the level of information necessary to allow consumers "to make informed choices". We do not argue that

PhonepayPlus has no role to play in this respect, merely that it should be mindful that it must provide the regulatory backdrop necessary to allow industry to provide consumers with the information required to make informed decision rather than PhonepayPlus assume this mantle itself.

Question 2: What information or evidence do you have about market trends and about the overall size of the phone-paid services market in 2009/10?

Question 3: What information or evidence do you have about any specific segments or content areas and their potential for real growth or decline over 2009/10?

Question 4: How do you see the phone-paid services market developing in 2010/11?

UKCTA members agree with the brief market summary provided in the consultation document. We do not believe that 2010/11 will see any major industry developments, particularly in the fixed line sector and that those there are will be primarily mobile based. At best we expect the market, including 087, to be flat throughout 2010/11.

One major external factor that will impact the industry during 2010/11 and the outcome could have a key impact on the PRS industry during the period under consideration by PhonepayPlus.

Question 5: What comments do you have on the priorities for 2010/11? Are there any other projects or issues that you think PhonepayPlus should consider for the coming year?

The priorities for 2010/11 are clearly ones of regulatory consolidation. UKCTA members welcome the introduction of a new principles based code of practice and look forward to working with PhonepayPlus in developing the detail. We believe that it is important that time is spent to develop a code of greater longevity than the current 11th Code of Practice, particularly considering the not inconsiderable costs of once again developing a new Code.

The other significant development will be the development of the registration database. We look forward to working with PhonepayPlus on this. UKCTA welcomes PhonepayPlus' desire to regulate further down the value chain and to tackle those

parties responsible for consumer harm. The registration database should provide the ideal means for identifying repeat offenders and to ensure that the less desirable elements of the industry can not simply reinvent themselves under a different holding company. UKCTA fully supports the new focus of regulation which we see as being the fundamental reason behind PhonepayPlus' recent successes. We would like to understand more the powers PhonepayPlus has on this area of the market in order to help shape the most efficient use of industry resources.

Question 6: Do you agree that PhonepayPlus should increase consumers' PRS literacy, in so far as it builds an appropriate level of trust in the market?

Phonebrain showed how a literacy campaign could be developed upon a relatively small budget and PhonepayPlus rightly set out their achievements in establishing such a scheme. However the primary duty of PhonepayPlus is as a regulator of the PRS industry and consumer literacy projects have to come second to this primary function.

There are other parties with a clear responsibility for consumer literacy, not least of whom are individual Telecommunications Providers and Ofcom. Originating Providers have a responsibility under General Condition 14 to provide clear pricing in relation to PRS calls as well as a Code of Practice setting out how PRS works. At the same time Terminating Providers have similar obligations in respect to pricing transparency. If Ofcom and PhonepayPlus effectively enforce these existing measures there is little need for widespread consumer literacy campaigns and instead PhonepayPlus can engage in limited, targeted measures which offer the most effective and cost efficient results.

Question 7: How should PRS literacy work be funded, through the industry levy or through a new fine sanction imposed for breaching the PhonepayPlus Code of Practice?

We have already commented that we do not believe consumer literacy should be the primary function of PhonepayPlus and as a result we do not expect that there should be

any reason to dramatically increase funding in this respect. PhonepayPlus has set out its aspiration to become a truly pre-emptive regulator and the industry has started to see the first evidence of this change. If PhonepayPlus is successful in tackling all but the most serious breaches in an informal manner with industry, the benefit to industry will be a much reduced need for additional consumer literacy campaigns. We urge PhonepayPlus to concentrate on this aspect of its role as a more efficient means of achieving consumer confidence within the market.

The proposal to create a new fine sanction is unclear. Is PhonepayPlus suggesting that the sanction is outside of the existing fine structure or is it a means of inflating fines applied to all companies found to have breached the PhonepayPlus Code? It is unclear whether PhonepayPlus could fine a company the full £250,000 fine available to it and then also apply an additional sanction in respect of consumer literacy or whether this sanction would have to come from the existing £250,000. If the latter it is merely diverting funds that would have been used across the industry as a whole.

UKCTA members already help to fund the consumer activities of Ofcom and whilst it may be appropriate for Ofcom to divest limited responsibility for PRS literacy to PhonepayPlus we would expect Ofcom to also divert some of this existing funding to PhonepayPlus.

In a market which is experiencing continued decline amongst fixed line operators we also query the appropriateness of the fixed line sector funding a literacy campaign from which they will only gain limited benefit. Ultimately it will be mobile services which will benefit from increased consumer literacy. As a result it should be the originating operator which should have the responsibility for funding consumer literacy about its services; an approach already in evidence through General Condition 14 and it should be for Ofcom to more effectively enforce tariff transparency through this existing regulation rather than PhonepayPlus to incur unnecessary expense on a limited budget.

Question 8: What is an appropriate initial level of funding for our PRS literacy programme?

We refer PhonepayPlus to our previous comments on the appropriateness of PhonepayPlus committing significant resource to this type of activity. It is UKCTA's view that PhonepayPlus reserves are better used in the establishment of the registration database project which is likely to be front-loaded in terms of capital expenditure.

Question 9: What areas should PhonepayPlus focus its core research programme upon in the coming year? Do you have knowledge of any industry research initiatives in these areas?

The consultation document set out an ambitious set of research but UKCTA members are concerned that the benefit of this work is not immediately apparent. We fully support any research specifically related to PhonepayPlus' regulatory remit where there is a clear benefit that can be demonstrated in future regulation. It is not however PhonepayPlus' role to undertake general market research within the market.

Previous experience of PhonepayPlus research has shown an inclination for expensive external agencies to be employed. We suggest that similar results could be gained through other means already at the regulator's disposal. For example UKCTA questions the benefit to be gained through in-depth research into 'issues of the day'. This information will already be immediately accessible to PhonepayPlus through its interaction with industry and consumers in general.

We would suggest that PhonepayPlus could achieve a similar level of intelligence gathering by fostering a more direct and conducive relationship with industry members that leads to greater levels of information sharing. This would provide PhonepayPlus with a means to access detailed information within the industry without the expense of external research agencies.

Question 10: Do you support our proposed budget changes for 2010/11 having regard to the activity and strategy that drives the changes? If not, please explain why?

UKCTA welcomes PhonepayPlus' continued focus on cost savings, particularly within the current climate. It is easy to call for further cuts, but UKCTA's is encouraged by the shift in budget away from investigations and enforcement to industry support and intelligence. A successful preventative approach will address many of the issues that the industry has faced and allow for greater cost savings in the future.

The one area of concern is the increase in costs related to the 12th Code of Practice. Whilst this is to be expected and we strongly welcome the move to a principles based code, we call upon PhonepayPlus to ensure that the latest code is given every opportunity of having a long shelf life and is fully future proofed in order to avoid the need for further revisions.

Question 11: Do you have any comments as to any other risks that PhonepayPlus might face that are not identified above as part of the business plan design?

The risks as set out by PhonepayPlus appear appropriate. We do not have any further comments to make.

- End -